IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 711 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKKUMAR CHUNILAL LAVARIYA
Versus
STATE OF GUJARAT

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Appearance :
MR HEMANG R RAWAL for the Appellant.
MS HANSA PUNANI, ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 01/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

The present appeal, filed under section 374 (2) of the Code of Criminal Procedure, is directed against the judgment and order dated 04.07.01 passed by Additional Sessions Judge, Ahmedabad [Rural] at Gandhinagar in Sessions Case No. 39 of 1999 whereby the learned trial Judge has sentenced the appellant to 3 years rigorous imprisonment and fine of Rs.1000/-, in default, simple imprisonment for 3 months for an offence punishable under section 506 (2) of the Indian Penal Code, 5 years rigorous imprisonment and a fine of Rs.1000/-, in default, simple imprisonment for 3 months for an offence punishable under section 363 of the Indian Penal Code, 7 years rigorous imprisonment and a fine of Rs.1000/-, in default, simple imprisonment for 3 months for an offence punishable under section 366 of the Indian Penal Code, and, 10 years rigorous imprisonment and a fine of Rs.1000/-, in default, simple imprisonment for 3 months for an offence punishable under section 376 of the Indian Penal Code. The learned trial Judge also ordered that all the sentences to run concurrently.

Short facts giving rise to the present appeal are as under:

As per the prosecution case, the appellant, on

28.06.98 at about 9.00 PM induced Saroj, daughter of the complainant, near Jalaram Mandir at Sector 29 and took her to the auditorium at Sector 29. After reaching the auditorium, he gave threat to the victim and used abusive language, and committed rape on the victim. Thereafter, the appellant took her to the garden at Sector 28, detained her throughout the night and released her in the morning at 6.00 AM. The accused threatened the victim of dire consequences if the incident was disclosed to anyone. The victim, however, disclosed about the incident to her mother, Shardaben, and she filed a complaint before Judicial Magistrate, First Class, Gandhinagar. On the strength of the complaint given by mother of the victim, investigation was carried out. The investigating officer visited the place of incident and recorded panchnama of the place of the incident in the presence of panch witnesses. Panchnama with regard to the person of the victim as well as the accused was prepared in the presence of panch witnesses. The victim and the accused were sent to General Hospital, Gandhinagar for the purpose of medical examination. The muddamal, which was seized, was sent to Forensic Science Laboratory for the purpose of analysis. The accused came to be arrested during the course of investigation. The investigating officer also recorded statement of the persons from the

neighbourhood. On receipt of the medical certificate, FSL report and other material on the record of the case, the accused was charge sheeted and produced before the Judicial Magistrate, First Class, Gandhinagar, who in turn committed the case to Sessions Court under section 209 of the Criminal Procedure Code as the case was exclusively triable by the Court of Sessions.

The prosecution has examined the following witnesses in order to prove the involvement of the appellant in the commission of offence:

PW No.	Name	Exh. No.
1	Dr. Vinodkumar Ambalal Patel	6
2	Shardaben Naranbhai Patni	10
3	Pravinsinh Shivsinh Vaghela	12
4	Chelaji Popatji Thakore	15
5	Shiraj Fakruddin Kureshi	16
6	Dr. Manisha Pranjivanbhai	17
7	Sarojben Naranbhai Patni	20
8	Savitaben Dharmendrabhai	21
9	Dashrathsinh Thakuji Vaghela	22
10	Punjaji Gopalji Solanki	24
11	Anwarhussien Kalumiya Rathod	28
12	Rajeshkumar Rameshchandra Mehta	29
13	Ashok Keshavlal Sharma	33

The prosecution has also placed reliance on the following documents in order to establish the guilt of the appellant in the commission of the offence:

Sl.No.	Description	Exh. No.
1	Complaint given by Shardaben Naranbhai Patni	11
2	Panchnama of the place of incident	13
3	Panchnama of the person of the victim	14
4	Panchnama of the person of the appellant	25
5	Medical certificate issued in favour of the victim	19
6	Medical certificate issued in favour of the appellant	7
7	Note which was sent to FSL	23
8	Receipt given by FSL	26
9	FSL Analysis Report	30
10	Serological report	31
11	Letter written to FSL	32

At the conclusion of the trial, further statement of the appellant was recorded under section 313 of the Criminal Procedure Code and the appellant submitted before the Court that a false case was foisted on him and he was falsely implicated in the case.

On appreciation of the evidence on record of the case, learned trial Judge held that the appellant, by giving intimidation and using abusive language committed an offence punishable under section 506 (2) of the Act and it is duly proved and supported by evidence on record of the case. The appellant took the victim from the lawful guardianship of her parents by giving her

inducement to commit illicit intercourse with her and thereby he has committed an offence punishable under section 363 and 366 of the Indian Penal Code. The trial Judge held that after giving threat to the victim and taking her to the auditorium at Sector 29, the appellant had committed rape on her against her will and desire and thereby he has also committed an offence punishable under section 376 of the Indian Penal Code.

The learned Judge, after going through the deposition adduced by the victim, vide Exh.20, held that the victim has stated in clear terms as to how she was induced by the appellant and after giving inducement and taking her to the auditorium at Sector 29, the appellant used abusive language and consequently committed rape on her without her consent. The deposition adduced by the victim is fully supported by the deposition adduced by the mother of the victim, Shardaben, PW.2, Exh.10 and the deposition adduced by Dr. Vinod, PW.1, Exh.6. The certificate issued by the General Hospital, Gandhinagar to the victim as well as to the appellant are produced vide Exh.19 and 7 respectively, and the same also corroborate the story about kidnapping under section 363 and 366 as well as rape under section 376 committed by the appellant on the victim. Thus, the learned trial

Judge convicted the appellant for offences punishable under sections 506 (2), 363, 366 and 376 of the Indian Penal Code.

Learned advocate for the appellant, Mr. Rawal submitted that the deposition adduced by the victim bristles with contradictions and therefore the same is required to be supported by deposition of other witnesses as well as documentary evidence. Learned advocate further submitted that if the deposition given by the victim does not inspire the confidence of the Court, then corroboration is required to be established by the prosecution. He submitted that in the facts and circumstances of the present case, the prosecution has not established the involvement of the appellant in the commission of offence by clinching evidence and therefore benefit of doubt is required to be given to the appellant. Learned advocate, by placing reliance on the deposition adduced by Dr. Vinodkumar Ambalal Patel, PW. No.1, Exh.6 submitted that nothing turns out from the deposition adduced by the Doctor so as to indicate the involvement of the appellant in the commission of the offence. The certificates issued by General Hospital, Gandhinagar in favour of the victim as well as in favour of the appellant and the history given therein can at

best be considered as a corroborative piece of evidence but since the victim herself has not given deposition with regard to involvement of the appellant in the commission of offence, it would be hazardous to convict the appellant for commission of offences with which he has been charged. Learned advocate further placed reliance on the FSL report and submitted that the FSL report also does not indicate that rape was committed on the victim. The panch witnesses, who are examined in the case have turned hostile and not supported the prosecution. Thus, the learned advocate representing the appellant submitted that prosecution has failed to establish the entire link connecting the appellant with the commission of offence under section 506 (2), 363, 366 and 376 of the Indian Penal Code and, therefore, the appellant is required to be acquitted.

Ms. Hansa Punani, learned Additional Public Prosecutor representing the State submitted that the victim has been examined, vide Exh.20. She has, in clear terms, deposed as to how she was given inducement by the appellant and after taking her to the auditorium at Sector 29, committed rape on her. There is no need of corroboration of the deposition adduced by the victim if it inspires confidence of the Court. The learned APP

further submitted that if corroboration is required to be established, then the prosecution has clearly established the corroboration to the deposition adduced by the victim, vide Exh.20, in the form of oral deposition adduced by the mother of the victim, PW 2 Shardaben, Exh.10, Dr. Vinod A Patel, PW.1 Exh.6, Pravinsinh S Vaghela, PW.3 Exh.12, Dr. Manisha Pranjivanbhai PW.6, Exh.17 and the Investigating Officer Dashrathsinh T Vaghela, PW.9 Exh.22. She further submitted that the oral deposition gets necessary support from the complaint given by the mother of the victim, vide Exh.11, the certificate issued by the General Hospital in favour of the victim and the appellant, vide Exh. No. 19 and 7 respectively, the panchnama of the place of the incident Exh.13, and the FSL Reports Exh. 30 and 31 to the present case. She submitted that the prosecution has thus established the involvement of the appellant in the commission of offence. Learned APP emphatically submitted that since the entire link is established by the prosecution showing the involvement of the appellant in the commission of offence, the learned trial Judge has rightly convicted and sentenced the appellant for offences punishable under section 506 (2), 363, 366 and 376 of the Indian Penal Code.

This Court has heard Mr. Rawal, learned Counsel of the appellant and Ms. Hansa Punani, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

On re-appreciation and re-evaluation of the evidence on record of the case, this Court finds that the appellant, after giving inducement to the victim on 28.06.98, took her to the auditorium at Sector 29 and after taking her to the auditorium, has committed rape on the victim against her will and desire. The prosecution has examined the victim, vide Exh.20, and she has stated in her deposition about the rape committed by the appellant on her at the auditorium at Sector 29. She was given inducement and subsequently threats were administered to her before committing rape on her. The deposition adduced by the victim and the version given by her in the examination-in-chief has not been dislodged in her cross-examination. Shardaben, PW.2, Exh.10, the mother of the victim has narrated in her deposition as to how the appellant gave inducement and forcibly took her

daughter to the auditorium at sector 29 and thereafter committed rape on her against her will and desire. The first complaint was given to Gandhinagar Sector 21 Police Station for the offences punishable under sections 354 and 506(2) of the Indian Penal Code and a second complaint was filed for offences punishable under sections 506 (2), 363, 366 and 376 of the Indian Penal Code. The complainant, at the time of giving the first complaint had apprehension that if the story of rape is revealed in the complaint, then it may damage the reputation of the family. However, subsequently, the complainant realized that in order to establish the case of rape, the entire story as to how the rape was committed on the victim was required to be narrated, and, therefore, she had filed the complaint before the Judicial Magistrate First Class, Gandhinagar. The learned trial Judge has discussed extensively as to under what circumstances the second complaint was filed and in view of the detailed discussion by the learned trial Judge, we do not consider it necessary to reiterate the same while appreciating the entire evidence of the case. The prosecution has examined Dr. Vinodkumar A Patel, PW.1. He had examined the appellant and after examining the appellant, had given the medical certificate, vide Exh. 7. Dr. Manisha, PW.6 had examined the victim after

examining the victim had also given the certificate, Exh.19, in favour of the victim. On perusal of the history given by the victim as well as the appellant, it becomes clear that the appellant was involved in the commission of rape. Thus, necessary corroboration is proved by the prosecution with a view to indicate the involvement of the appellant in the commission of offence. We have also perused the deposition adduced by the Investigating Officer, PW.9 Dashrathsinh Vaghela,Exh.22 and Punjaji Gopalji Solanki, PW.10 Exh.24, who took over the investigation from PW.9 Dashrathsinh. On perusal of the deposition it becomes clear that the procedure was followed by the investigating agency during the course of investigation in a scrupulous manner. The FSL reports produced, vide Exh. 30 and 31, are also carefully considered by us. Thus, on an overall perusal of the evidence on record of the case, the prosecution, in our view, has established the involvement of the appellant in the commission of offence, and each and every link is established by the prosecution in the present case. The basic ingredients of sections 506 (2), 363, 366 and 376 of the Indian Penal Code are also proved by the prosecution. In a rape case, the sole testimony of the victim itself is sufficient to convict the appellant but in the facts and circumstances of the

present case, there is ample corroboration to the deposition adduced by the victim, which we have discussed threadbare in the earlier part of this judgment.

For the foregoing reasons, we do not consider it fit to interfere with the impugned order passed by the learned trial Judge convicting the appellant for offences punishable under sections 506 (2), 363, 366 and 376 of the Indian Penal Code. The appeal fails and is hereby dismissed. The impugned order of conviction and sentence stands confirmed. Muddamal be disposed of in terms of the directions given by the learned Judge of the trial Court in the impugned judgment.

[ANIL R. DAVE, J.]

mathew [H.B.ANTANI, J.]